

#### § 1738.16

will be carried forward for consideration for funding from the national reserve.

(b) New completed applications proposing to provide service where none is available to residential customers, as set forth in § 1738.11 of this part, will be considered for funding, from the state reserve prior to April 1 and the national reserve after April 1, on a first-in, first-out basis, as long as funds remain available. As applications are processed using the first-in, first-out process, RUS may expedite for consideration for funding applications proposing to provide service where none is available, as set forth in § 1738.11(b)(1). When funds are not adequate to fund the next completed application on a first-in, first-out basis, RUS will consider subsequent completed applications for funding on a first-in, first-out basis.

(c) On January 1, March 30, April 1, July 1 and September 30 of the fiscal year, all unfunded, completed applications on hand will be prioritized and considered for funding, from the state reserve prior to April 1 and the national reserve after April 1, as follows:

(1) First, where broadband service is not available to residential customers, as set forth in § 1738.11(b)(1) of this part, on a first-in, first-out basis, as long as funds remain available.

(2) Second, where broadband service is not available to residential customers, as set forth in § 1738.11(b)(2) and (3) of this part, on a first-in, first-out basis, as long as funds remain available.

(3) Third, where broadband service is available to residential customers, on a first-in, first-out basis, so long as funds remain available.

#### § 1738.16 Eligible entities.

(a) RUS makes broadband loans to legally organized entities providing, or proposing to provide, broadband services in eligible rural communities.

(1) Types of eligible entities include cooperative, nonprofit, limited dividend or mutual associations, limited liability companies, commercial organizations and Indian tribes and tribal organizations as defined in 25 U.S.C. 450b (b) and (c). Individuals or partnerships of individuals are not eligible entities.

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(2) An entity is not eligible if it serves more than 2 percent of the telephone subscriber lines installed in the United States.

(3) To be eligible, an entity must have sufficient authority to enter into a contract with RUS and to carry out the purposes of the proposed loan.

(b) A State or local government, including any agency, subdivision, or instrumentality thereof (including consortia thereof) shall be eligible for a broadband loan only if, not later than April 30, 2003, no other eligible entity is already offering or has committed to offer broadband services to the eligible rural community. RUS will determine whether the commitment is sufficient for purposes of this paragraph.

#### § 1738.17 Civil rights.

Applicants are required to comply with certain regulations on non-discrimination and equal employment opportunity. See RUS Bulletin 1790–1, “Nondiscrimination Among Beneficiaries of RUS Programs” and RUS Bulletin 20–15:320–15, “Equal Employment Opportunity in Construction Financed with RUS Loans”; 7 CFR parts 15 and 15b and 45 CFR part 90.

#### § 1738.18 Minimum and maximum loan amount.

Recognizing plant costs, the applicant’s cost of system design, and RUS’ administrative costs, RUS will not consider applications for loans or loan guarantees of less than \$100,000. Maximum loan amounts apply only to an applicant for a direct 4-percent broadband loan, as provided for in § 1738.30(b)(2) of this part.

#### § 1738.19 Facilities financed.

(a) RUS makes broadband loans to finance the construction, improvement, and acquisition of facilities and equipment to provide broadband service in eligible rural communities.

(b) RUS makes broadband loans to finance broadband facilities leased under the terms of a capital lease as defined in generally accepted accounting principles. RUS will not make a broadband loan to finance facilities leased under the terms of an operating lease as defined in generally accepted accounting principles.

(c) RUS makes broadband loans to finance an acquisition by an eligible entity only when the acquisition is necessary and incidental to furnishing or improving rural broadband service.

(d) RUS will not approve the use of broadband loans to acquire any stock or any facilities or equipment of an affiliate of the applicant.

(e) RUS will not make a broadband loan to finance the following items:

(1) Customer terminal equipment (including modems) not owned by the applicant during its economic life and any associated inside wiring;

(2) Vehicles not used primarily in construction; and

(3) Operating expenses.

(f) RUS will not make a broadband loan to finance systems or facilities that have not been designed and constructed to RUS' satisfaction. See RUS' Bulletins 1738-1 and 1738-2.

(g) Prior to October 1, 2004, RUS will not make a broadband loan under this part to provide broadband service in an area receiving local exchange telephone service from an RUS telecommunications borrower to any entity other than the incumbent RUS telecommunications borrower if, not later than 90 days after RUS receives an application proposing to provide broadband service in the borrower's local exchange service territory, the incumbent RUS telecommunications borrower submits to RUS a letter of intent to provide or begin to construct residential broadband service in its local exchange service territory prior to October 1, 2004. The incumbent RUS telecommunications borrower must provide, prior to October 1, 2004, support of their intent to provide broadband service through submitting either a loan application to construct broadband facilities or proof that construction of broadband facilities has begun. Thereafter, unless the RUS telecommunications borrower has constructed or begun to construct broadband facilities in its service area, RUS will consider an application for a loan under this part to provide the broadband service in an area served by an RUS telecommunications borrower according to the criteria for determining broadband availability in § 1738.11(b) of this part.

(h) RUS will not approve loans to more than one applicant to provide broadband service within the same eligible rural community, nor to an applicant proposing to provide service in a community served by a borrower using funds under this part regardless of the definition of broadband service at the time of loan approval.

(i) If an unadvanced loan, or a portion thereof, is rescinded, a new loan shall not be made to the same applicant for the same purposes as in the rescinded loan.

#### **§ 1738.20 Credit support requirement.**

(a) To be eligible for a loan, RUS will require an applicant to provide credit support in an amount equal to 20 percent of the requested loan amount.

(b) The applicant must have, as part of the minimum 20 percent requirement, cash or, in the case of State and local governments, cash equivalents in an amount equal to operating expenses for the first full year of providing service, as determined by a feasibility study satisfactory to RUS. This cash requirement will be waived for applicants operating as telecommunications companies which have positive cash flow for the two calendar years immediately preceding the date of application.

(c) The remainder of the minimum requirement can be met by undepreciated assets which would normally be financed as part of a loan under this part, additional cash or cash equivalents, licenses, or an unconditional letter of credit, or the equivalent, satisfactory to RUS.

(d) For purposes of this section, assets and licenses will be valued based on the lower of cost or market value, net of liens or other obligations of payments for those assets and licenses.

#### **§ 1738.21 Interim financing.**

(a) Upon notification by RUS that an applicant's application is considered complete, the applicant may enter into an interim financing agreement with a lender other than RUS or use its own internally generated funds for interim construction.